

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

JOHN RICHARD JAE,

CIVIL No. 1-CV-00

Plaintiff
vs. JUDGE'S COPY

DR. ROBERT CLARK, MARIE L.

DRAGOVICH, JOHN A. PALAKOCH,

ROBERT N. NOVOTNEY, MICHAEL

J. KAZOR and JOHN ANDRADE,

Defendants.

U.S. District Court
Magistrate Judge

FILED

JAN 9 - 2001

PER

MARSHALL, PA.

DEPUTY CLERK

PLAINTIFF'S REPLY BRIEF IN OPPOSITION TO
DEFENDANT DR. CLARK'S BRIEF IN SUPPORT
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

I. RELEVANT STATEMENT OF THE CASE

On or about June 5, 2000, Plaintiff John Richard Jae, a Pennsylvania State Prisoner filed a 42 U.S.C. § 1983 Civil Rights Complaint against Defendant Dr. Robert Clark, Chief Psychiatrist at Camp Hill.

On or about October 10, 2000, Defendant Dr. Clark filed a Motion To Dismiss Plaintiff's Complaint. On about October 24, 2000, filed his Brief In Opposition of Exhibits in support of such Motion.

This is Plaintiff's Reply Brief In Opposition to Defendant Dr. Clark's Motion To Dismiss Plaintiff's Complaint.

II. QUESTION PRESENTED

A.

WHETHER PLAINTIFF'S COMPLAINT
COMPLAINT MUST BE DISMISSED AS A
MATTER OF LAW FOR FAILURE TO
EXHAUST ADMINISTRATIVE REMEDIES

Suggested Answer: No

III. ARGUMENTS

P. 42 U.S.C. § 1997e(a), as amended by the
IS UNCONSTITUTIONAL AS IT
Impermissibly Infringes Upon AND
VIOLATES THE DECISION OF THE SUPREME
Court of the United States which IS THE
SUPREME LAW OF THE LAND LIKE THE U.S.
STATES CONSTITUTION.

Plaintiff avers & submits, that 42 U.S.C.
§ 1997e(a), as amended by the PLRA, IS UNCON-
STITUTIONALLY INFRINGES UPON AND VIOLATES
THE DECISIONS OF THE UNITED STATES SUPREME
COURT IN Failey v. Board of Regents of the State
of Florida, 457 U.S. 496, 102 S.Ct. 2557/19
in Monroe v. Pape, 365 U.S. 167, 183, 81 S.
(1961) - which both hold that a state plaintiff
does not have to exhaust his procedural administrative
remedies before filing a 42 U.S.C. § 1997e(a)
rights action in federal court, & since decisions
of the United States Supreme Court, like the
Constitution itself, are the supreme law of the
country, Congress exceeded its authority in enacting

II. 42 U.S.C. § 1997e(a), AS AMENDED BY THE
IS UNCONSTITUTIONAL, AS IT IMPROBES
IMPERMISSIBLY SINGLES OUT AND TREATS PRISONERS DIFFERENTLY
THAN OTHERS AND THUS DENIES PRISONERS EQUAL PROTECTION / TREATMENT OF THE LAW UNDER THE
FOURTEENTH AMENDMENT OF THE UNITED STATES CON-

Plaintiff avers & submits, that 42 USC
as amended by the PLRA, IS UNCONSTITUTIONAL.
IT IMPROBES SINGLES OUT AND TREATS PRISONERS
DIFFERENTLY THAN OTHERS (E.G., NON-PRISONERS)
THUS DENIES PRISONERS EQUAL PROTECTION / TREATMENT
OF THE LAW UNDER THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION, AND BECAUSE
CONGRESS IS NOT PERMITTED TO ENACT ANY
WHICH WOULD ANY PROVISION OF THE UNITED STATES
CONSTITUTION, WHICH IS THE SUPREME LAW OF THE LAND.
AND, CONGRESS EXCEEDS ITS AUTHORITY IN
42 U.S.C. § 1997e(a).

III. Plaintiff's Reply To Defendant's
Claims And Arguments.

Defendant Dr. Clark first claims that
"Article I, section 8,

care which he received at that facility.
However, in reply to such, the Plaintiff avers & submits
that such is "not true" as he did not file
Complaint pursuant to ~~42 U.S.C. § 1983~~ against Defendant,
2000, arising out of the medical care which he received
facility, but rather he filed the complaint against Dr.
Dr. Clark, on June 5, 2000, for and based upon the
same facts as is recited therein pp. 1-2, of
Plaintiff's Reply Brief In Opposition To Defendant's
Motion To Revoke Plaintiff's In Firma Pauperis Status And To
Filing Of Responsive Pleading, which he now here
incorporates herein by reference hereunto the same
thus, the above claim of Defendant Dr. Clark's
Factually frivolous & an untrue "lie" by such Dr.
Dr. Clark & his counsel "have" committed fraud,

Defendant Dr. Clark next claims & argues
"The Pennsylvania Department of Corrections has
adopted a Consolidated Inmate Grievance Review
DC-ADM #804 (effective October 20, 1997) with
certain exceptions, DC-ADM #801, Section II
provides that after an attempted informal resolution
of the problem, a written grievance may be
submitted to the Grievance Coordinator. An
appeal from the Coordinator's decision may be made
in writing to a Facility Manager or Community
Corrections Regional Director and a final written
/See Defendant Dr. Clark's Brief In Support of Motion
Dismiss Plaintiff's Complaint at S. of the inmate
Defendant Dr. Clark's 10/24/00 Brief.

appeal may be presented to the Central Office Review Committee. If the grievance concerns an alleged medical problem, any appeal must be taken to the Central Office Medical Review Committee.

However, in reply to the above, the plaintiff now submits, that such is not completely true.

DC-ADM-804 has been amended several times since its enactment in 1994, & DC-ADM-

-1-2 discontinued the Central Office Medical Review Committee and all appeals concerning an alleged medical problem to such committee, effective May 20, 1996, and DC-ADM-804-2 (1), effective November 1, 1997.

"The procedures for appeals final review under DC-

ADM 804, VI, D, S-2 are amended as follows:

(1) The Chief Hearing Examiner will replace the Central Office Review Committee (COCR) at final review of all grievance appeals. The Chief Hearing Examiner will perform all functions previously performed by CORC."

and therefore, given the above-referenced/above amendments to DC-ADM 804, Defendant Dr. Clark's above claims/arguments are clearly untrue, out of date and this Court may not, by law, consider

(a) such.

Defendant Dr. Clark next claims & argues, that

"Nowhere in his Complaint and/or Amended Complaint against Dr. Clark does Plaintiff allege that he has filed any institutional grievance complaint with respect to

2/ See Defendant Dr. Clark's 10/24/00 Brief at

the medical care which he received from Dr. Clark while incarcerated at SCI-Camp Hill. Since no initial grievance was filed with the Department of Corrections, Plaintiff has not and cannot, pursue any administrative appeals including any appeal to the Central Office Medical Review Committee. Thus, it is readily apparent from the face of the Complaints that Plaintiff has failed to exhaust available administrative remedies prior to initiating this C.R.P. action. Consequently, Plaintiff's Complaints must be dismissed until such time as he has pursued all of the steps of the inmate grievance procedure, including any and all administrative appeals. (P3)

However, by reply to the above, Plaintiff avers submits, that, first of all, he must ask, what is the matter with Defendant Dr. Clark's cancer? he dumb, blind or stupid, or all three of the above?

For, while it is true that this Plaintiff does state/allege that he had filed any previous complaint with respect to the medical care which he received from Dr. Clark while incarcerated at SCI-Camp Hill, (because he did not receive any medical care from Dr. Clark, as Defendant Dr. Clark did not provide any medical care, as he is "not" a physician "but" a medical doctor); IT IS AS Plaintiff's nose on defense cancer's face, that, the Plaintiff "did" allege in his initial complaint, Defendant Dr. Clark's 10/24/00 brief, at

that he filed a grievance on the facts that he sues D Defendant D2 Clark for in his complaint, herein in this case on May 10, 2000, of that such prison grievance was received by the Prison Grievance Coordinator and Grievance No. CAM-0294-00 was assigned to such grievance & that the Grievance Coordinator assigned such grievance.

Ms. Law, the SCI-Camp Hill Corrections Health Care Administrator (CHCA) for Investigation and decision,⁴ that, in accordance with DCI #804-K.B.3¹, §4, of the Pa. Dept. of Corrections Law had ten (10) working days in which to investigate, personally interview this plaintiff and provide her written decision for her and for such grievance;⁵ that, Ms. Law ret to do so and the tenth working day expired May 23, 2000, and that, therefore, this Plaintiff had tried & was unable to exhaust his Admin remedies on this here grievance, due to, Law, CHCA, (Prison Staff) failure/refusal to follow mandatory prison Grievance Policy/Investigate/decide such grievance & due to the seriousness of the issue involved herein this complaint and the risk of danger of severe physical injury to this Plaintiff he could not afford to wait no longer to file this complaint/civil action with this court.⁶ and the Plaintiff's initial complaint, at Paragraph 16.⁷

⁴/See Plaintiff's initial complaint, at Paragraph 16.

⁵/See Id., at Paragraph No. 31.

⁶/See Id., at Paragraph No. 32.

⁷/See Id., at Paragraph No. 23.

This her date, Ms. Law, has never filed her decision on such grievance No. CAH2-0294-

Plaintiff can only be required to exhaust those Administrative Remedies which are available to him see Camp v. Brennan, 2 F.3d 279 (3d Cir. 2000); and by refusing / failing to render a written decision within the mandatory ten (10) working day period decision on a grievance (DC-ADN2 #804) and / nor even to this her date, Ms. Law denied the remaining administrative remedies (appeals) unavailable to this her Plaintiff / plaintiff, as he cannot use such until he receives a written initial review decision on such grievance which to appeal from & here he did "not" receive such. Furthermore plaintiff questions how long must he wait for a decision on a grievance he files? This court would rule that he must no matter what wait until he fully exhausts Prison Administrative Remedies before filing his complaint with the Court, than such would mean that prison staff could relate off the time requirements for deciding prison grievance or an appeal thereon & as long as they want to decide such a problem never decide such, and this can be the result Congress intended in amending U.S.C. § 1997e(g), to require exhaustion of administrative remedies and such would turn the ~~grievance~~ on its head & severely impede plaintiff's First Amendment rights.

Rights of access to the courts. No, as plaintiff avers & submits, once he files a prison grievance, prison staff refuse to decide such or appeal such in writing within the mandatory time limit requirement under DC-ADM #804.5, should not have to exhaust any further administrative remedies on such before filing his complaint with the court as such remedy which he may have left would be rendered unavailable to him thru no fault of his own but thru the prison staff's failure to comply with the mandatory time limits for decision of his grievances. Federal Courts have ruled this way & so should this court.

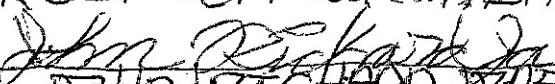
Second of all, by reply to such claim/argument Defendant Dr. Clark's, the Plaintiff avers & submits that, his Amended Complaint did not even apply to Defendant Dr. Clark, but only to connecting Defendants, herein this case, & thus Defendant Clark has no standing at all to argue that the Plaintiff did not exhaust his administrative remedies before he filed such with this court. Plaintiff could not have filed a prison grievance about that raised therein in his Amended Complaint DC-ADM #804. VI-E.2., prohibits him from doing so. Third of all, for the reasons/arguments listed above supra, at 6-8, this court should not dismiss the complaints here until such time as plaintiff has pursued all of the steps of the inmate grievance procedure, including any & all administrative appeals, as are not negotiable from the time he incurred them.

Clark cites in his brief, Peoples v. Mohadjer,¹⁷ No. 3:97-CV-0205 (M.D. Pa. 1997) and Payton v. Horn, 49 F. Supp. 2d 791, 797 (E.D. Pa. 1999), should not be applied to this plaintiff based upon the plaintiff's foregoing arguments, herein, at § 97 and because such cases are distinguishable from the here instant case and because such are not the controlling law, as the 3rd Circuit's recent decision/holding in Campbell v. Brennan, 219 F.3d 279 (3d Cir. 2000) is the controlling law here on this.

IV CONCLUSION

Based upon the above & foregoing, the arguments & citations of authorities, herein, defendant Clark has failed to show that he is entitled to have Plaintiff's Complaint in this instant case dismissed & as a matter of law, this Court is required to deny defendant Clark's Motion to Dismiss Plaintiff's Complaint herein this case and must order defendant Clark to answer Plaintiff's initial complaint, herein, this case within ten (10) days of receipt of the Court or that a judgment by default will be entered against him, herein this case.

RESPECTFULLY SUBMITTED,

(S) 
MR. JOHN RICHARD JAGGER
Plaintiff and Pro Se Counsel

Dated: 2/8/2001 BERWICK, MR. John Richard Jagger,
SCI-Greenes/MC
175 Progress Drive
Waynesburg, PA 15370

VERIFICATION

I, Plaintiff and Rose Counsel John Richard Jacob,
Verify under the penalty of perjury that the foregoing is true
& correct to the best of my knowledge & belief, pursuant
to 28 U.S.C. § 1746.

(S) John Richard Jacob
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Plaintiff and Rose Counsel

Dated / Executed on =
30th DECEMBER 2000 =
At = Waynesburg, Pennsylvania =

Joe vs. Clark et al.
CRN No. 1-CK-00-1090
CERTIFICATE OF SERVICE

I certify that on 1-02-
I mailed to the persons listed below true and correct copies of the URGED
Plaintiff's Reply Brief in Opposition to [REDACTED]
[REDACTED] Brief in Support of Motion to Dismiss Plaintiff
by way of U.S. 1st Class Mail, postage pre-paid.

I certify that on 1/02/00, I gave to RPSM officials
for mailing to this court, to original of the above-sa-
document.

I certify under penalty of perjury & pursuant to 28 U.S.C.
§1746, that the above, is true & correct.

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Dated/Executed on:
2nd JANUARY 2001:
At Waynesburg, PA 15370

(S) John Richard
MR. JOHN RICHARD
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Waynesburg, PA 15370
Plaintiff and Pro Se Cau-

JAP IG-Clark, et al.
CM No. 1-00-100
CERTIFICATE OF SERVICE

I certify that on 1/02/00 I mailed to the persons below, a true & correct copy of the within Motion for Appointment of Counsel along with the Brief in Support, by way of U.S. 1st Class Mail, postage prepaid.

I certify that on 1/02/00, I gave to ANNA OFFICELER, for mailing to this Court, the originals of each of the above documents.

I certify under penalty of perjury that the above, is a correct pursuant to 28 U.S.C. § 1746.

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At: Harrisburg, Pennsylvania

(S) John Richardson
MR. JOHN RICHARDSON
Plaintiff and Rose Anne

Dae vs. Clark, et al.
CIVIL NO. 1:CV-00-1090
CERTIFICATE OF SERVICE

I certify that on 1-02-01, I mailed to the persons listed below a true & correct copy of the within Plaintiff's Brief in Opposition to Connections Defendants Motion to Revoke Plaintiff's Informational Statement and to Defendant Filing of Responsive Pleading to Plaintiff's Amended Complaint and Exhibits to Plaintiff's Brief in Opposition to Connection Defendants' Motion to Revoke Plaintiff's Informational Statement and to Defendant Filing of Responsive Pleading to Plaintiff's Amended Complaint, by way of U.S. 1st class Mail, as prepaid:

I certify that on 1-02-01, I gave to Plaintiff's Office the following to this Court the originals of each of the above documents:

I certify under penalty of perjury that the above, is true and pursuant to 28 U.S.C. § 1746.

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2nd JANUARY 2001

At: Harrisburg, Pennsylvania

(S)

John Richard
MR. JOHN RICHARD
Plaintiff and Counsel

Jackie Clark et al.
CV No. 13CV-00-1090
CERTIFICATE OF SERVICE

I Certify under penalty of perjury & pursuant to 28 U.S.C. § 1746, that on 1/02/01, I mailed to the persons listed below, a true & correct carbon copy of each of the following Motion Requesting Appointment of a Mental Health Expert, Inter Alia Motion for Stay, along with a Brief in Support by way of U.S. 1st Class Mail, Postage Prepaid:

I certify under penalty of perjury & pursuant to 28 U.S.C. § 1746, that on 1/02/01, I gave to AT&T officials here for mailing this copy, the originals of the above-same documents:

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At Waynesburg, Pennsylvania

(S) — John Richard Jr.
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